

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

IN RE:

EXIOM SITE SERVICES, LLC,  
D/B/A SOUTHERN STAR  
EXCAVATIONS AND  
DEMOLITION,  
Debtor

CASE NO. 16-40401  
(Chapter 7)

SPAUGLASS CONTRACTORS, INC.,  
Movant

v.

EXIOM SITE SERVICES, LLC,  
D/B/A SOUTHERN STAR  
EXCAVATIONS AND  
DEMOLITION,  
Debtor

AND

CHRISTOPHER MOSER,  
Trustee

**SPAUGLASS CONTRACTORS, INC.'S MOTION TO COMPEL CHAPTER 7 TRUSTEE  
TO ASSUME OR REJECT EXECUTORY CONSTRUCTION CONTRACTS**

NO HEARING WILL BE CONDUCTED ON THIS MOTION UNLESS A WRITTEN OBJECTION IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AND SERVED UPON THE PARTY FILING THIS PLEADING WITHIN TWENTY-ONE (21) DAYS FROM DATE OF SERVICE UNLESS THE COURT SHORTENS OR EXTENDS THE TIME FOR FILINGS SUCH OBJECTION. IF NO OBJECTION IS TIMELY SERVED AND FILED, THIS PLEADING SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT. IF AN OBJECTION IS FILED AND SERVED IN A TIMELY MANNER, THE COURT WILL THEREAFTER SET A HEARING. IF YOU FAIL TO APPEAR AT THE HEARING, YOUR OBJECTION MAY BE STRICKEN. THE COURT RESERVES THE RIGHT TO SET A HEARING ON ANY MATTER.

To the Honorable Brenda T. Rhoades, Chief United States Bankruptcy Judge:

SpawGlass Contractors, Inc., Movant, presents this Motion to Compel Chapter 7 Trustee to Assume or Reject Executory Construction Contracts as follows:

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 as well as 11 U.S.C. § 365. This matter is a core proceeding pursuant to 28 U.S.C. § 157. The Court has constitutional authority to determine this matter. Venue is proper in this Court pursuant to 28 U.S.C. § 1409.

2. Exiom Site Services, LLC d/b/a Southern Star Excavations and Demolition initiated this proceeding by filing a Voluntary Petition for Relief under Chapter 7 of Title 11 of the United States Code on March 2, 2016.

3. Christopher Moser has been appointed the Chapter 7 Trustee in this case.

4. SpawGlass Contractors, Inc. ("SpawGlass") is a general contractor on two construction projects in which Exiom Site Services, LLC d/b/a Southern Star Excavations and Demolition, Debtor ("Debtor") is a subcontractor. One of the projects is known as the University of Texas-Dallas Parking Garage Project ("UTD Parking Garage") and the other is the Tarrant County Precinct One Maintenance Facility ("Tarrant County Project"). (The two Subcontracts with attachments are voluminous so they have not been attached to this Motion. If any party-in-interest desires a copy please contact undersigned counsel and a cOpy will be promptly provided.)

5. Prior to Debtor's commencement of this voluntary case on or about March 2, 2016 Debtor was in default in connection with its subcontracts with SpawGlass. SpawGlass had issued Notice of the Defaults to Debtor and to its Surety on both projects,

Merchants National Bonding (“The Surety”). The Surety has issued Payment Bonds and Performance Bonds with Debtor as Principal on both projects.

6. By virtue of the nature of Debtor’s business operations, its work is typically performed early in the course of a project. Delays at this stage of the project become critical, with the potential to become very costly on account of their impact on other trades, operations and the potential for delay damages to be levied by project owners.

7. Debtor’s subcontracts with SpawGlass on the UTD Parking Project and the Tarrant County Project constitute executory contracts as that term is known in 11 U.S.C. § 365. Pursuant to that section of the Bankruptcy Code the Trustee is empowered to assume or reject executory contracts such as these. 11 U.S.C. § 365 (d)(1) grants the Trustee a period of 60-days following entry of the Order for Relief within which to assume or reject executory contracts.

8. Awaiting a 60-day period of time for the Trustee to elect to assume or reject the executory subcontracts of Debtor would be disastrous for the projects, SpawGlass, the Surety and even this Estate. Any significant periods of downtime on either of the Projects would result in substantial damages and costs, much of which will increase the amount of claims in this Estate on account of Debtor’s pre-petition indemnity of the Surety for any claims it must pay and costs it incurs.

9. The Trustee is aware of the time sensitive nature of the need for determination of assumption or rejection of these executory subcontracts. The Trustee has indicated the Estate has neither the funds nor the ability to assume and perform the subcontracts, or to cure the defaults prerequisite to assumption of the subcontracts. The Trustee has expressed his willingness to promptly reject these two executory contracts in order to allow SpawGlass and the

Surety to move promptly to locate replacement subcontractors and to relet the two subject subcontracts.

10. The Trustee has no opposition to the relief sought by this Motion and upon information and belief, will be approving an agreed order rejecting the two executory subcontracts and allowing for the reletting of the subcontracts.

11. Wherefore, premises considered, SpawGlass prays that upon hearing of other consideration hereof, the Court grant this Motion and compel Trustee to either assume or reject the two executory subcontracts in a period of not less than five business days from the date of the Court's order, and for such other and further relief to which Movant may be entitled.

Respectfully submitted,

**COKINOS, BOSIEN & YOUNG**

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**COUNSEL FOR CREDITOR,  
SPAUGLASS CONTRACTORS, INC.**

**CERTIFICATE OF CONFERENCE**

The undersigned certifies that on or about the 9th day of March 2016 he spoke with Christopher Moser, the Chapter 7 Trustee, with respect to the relief requested in this Motion. Mr. Moser indicated that he had no objection to the relief sought by the Motion.

By: /s/ Craig E. Power  
Craig E. Power, Counsel for  
SpawGlass Contractors, Inc.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this the 11th day of March 2016, true and correct copies of this Motion were electronically served by the Court's ECF System on parties entitled to notice thereunder, including counsel for Debtor, the Chapter 7 Trustee and the U.S. Trustee, and that, on the same day, true and correct copies of this Motion were served by U.S. First Class Mail, postage pre-paid, on the attached service list recipients.

BY: /s/ Craig E. Power  
CRAIG E. POWER

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SOUTHWEST CONSTRUCTION 11430 NEWKIRK ST DALLAS, TX 75229-2028	SPANGLASS CONTRACTORS, INC. 1000 W MAGNOLIA AVE FT WORTH, TX 76104-4503	SPSD, INC 1108 107TH ST ARLINGTON, TX 76011-3109
STAR TIRE PO BOX 541508 DALLAS, TX 75354-1508	STORKCON LLC 900 CIRCLE IN THE WOODS FAIRVIEW, TX 75069-3534	STUART REEVES TRUCK REPAIR 18330 CR 4001 HABANK, TX 75147-2999
SUNBELT RENTALS PO BOX 409211 ATLANTA, GA 30384-9211		
TARANGO TRUCKING, LLC P.O. BOX 177786 IRVING, TX 75017-7786	TEXAS BANK AND TRUST 401 W. GEORGE BUSH Fwy STE 101 RICHARDSON, TX 75080-1145	TEXAS EROSION SUPPLY 1327 CENTURY WAY WYLIE, TX 75098-4072
TEXAS JOHNS, LLC 900 PARKER SQUARE STE 250 FLOWER MOUND, TX 75028-7440	TEXAS MUTUAL INSURANCE CO. 6210 E HWY 290 AUSTIN, TX 78723-1026	TEXAS WORKFORCE COMMISSION 101 E 15 ST AUSTIN, TX 78778-0001
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